



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID: DoD-2015-OS-0063]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: Defense Logistics Agency (DLA) is exempting records maintained in the system of records notice S240.28 DoD, Case Adjudication Tracking System (CATS) from pertinent provisions of the Privacy Act of 1974. In this rulemaking, the DLA is exempting portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: The rule will be effective on **September 17, 2015** unless adverse comments are received by **September 8, 2015**. If adverse comment is received, the Department of Defense will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. LaDonne L. White (703) 767-5045.

SUPPLEMENTARY INFORMATION:

This direct final rule makes non-substantive changes to the DLA Program rules. This will improve the efficiency and effectiveness of DoD's program by ensuring the integrity of the security and counterintelligence records by the DLA and the Department of Defense.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. This rule does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments

or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C.

Chapter 6)

It has been determined that this Privacy Act rule does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense. A Regulatory Flexibility Analysis is not required.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this Privacy Act rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the

private sector, of \$100 million or more and that this rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this Privacy Act rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no Federalism assessment is required.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

PART 323-DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93-579, Stat. 1896 (5 U.S.C. 552a).

2. In §323.6, add paragraph (j) to read as follows:

§323.6 Exemption rules.

* * * * *

(j) System identifier: S240.28 DoD (Specific exemption).

(1) System name: Case Adjudication Tracking System (CATS)

(2) Exemption: (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal

contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d)(1)(2)(3)(4), and (e)(1).

(3) Authority: 5 U.S.C. 552a(k)(5).

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3) and (d)(1)(2)(3)(4), when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the confidential source's identity not only will result in the Department breaching the express promise of confidentiality made to the source but it would impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources may be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From 5 U.S.C. 552a(e)(1), as in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular

information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: June 22, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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